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UNITED STATES OF AMERICA

UNITED STATES ARMY

CORPS OF ENGINEERS

BALTIMORE DISTRICT

HEARING

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IN THE MATTER OF: |

PROPOSAL TO REISSUE WITH  
MODIFICATIONS OR NOT TO REISSUE  
THE MARYLAND STATE PROGRAMMATIC  
GENERAL PERMIT (MDSPGP) FOR A  
FIVE YEAR PERIOD  
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Public Notice  
#00-036

ANNE ARUNDEL COUNTY LIBRARY  
1410 WEST STREET  
ANNAPOLIS, MARYLAND

Tuesday,  
October 24, 2000

The Above entitled matter came on for hearing  
pursuant to notice at 5:30 p.m.

BEFORE: LINDA A. MORRISON  
CHIEF, REGULATORY BRANCH

**SAG, CORP**

4218 LENORE LANE, N.W.  
WASHINGTON, D.C 20008

(202) 797-2525

VIDEO;TRANSCRIPTIONS

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APPEARANCES:

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Chief, Regulatory Branch  
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6 P-R-O-C-E-E-D-I-N-G-S

7 5:30 p.m.

8 MS. MORRISON: We're going to get started.

9 Good evening, everybody. My name is Linda Morrison.

10 I'm the Chief of the Regulatory Branch for the  
11 Baltimore District, Army Corps of Engineers.

12 I would also like to introduce Gary Setzer.  
13 He's Chief of Wetlands and Waterways Program at the  
14 Maryland Department of the Environment.

15 I would also like to thank the Anne Arundel  
16 Public Library for the use of these facilities. I hope  
17 everybody has filled out an attendance record. We need  
18 that so we can get an accurate record of the people  
19 that attended the hearing tonight.

20 The Corps is holding this public hearing to  
21 provide you, as members of the public, an opportunity  
22 to express your views regarding the Special Public  
23 Notice No. 00-036.

24 Tonight's hearing will provide the public of  
25 Baltimore District with additional information that  
26 will be considered during the evaluation of the pending  
27 reissuance of the Maryland State Programmatic General

1 Permit.

2 Special public notice 00-036 was issued on  
3 September 15, 2000. The purpose of this public notice  
4 was to request comment on whether to reissue the  
5 Maryland State Programmatic General Permit with or  
6 without modifications for a five-year period or not  
7 to reissue the Maryland State Programmatic General  
8 Permit.

9 Modifications proposed to be incorporated  
10 into the revised Maryland State Programmatic General  
11 Permit were identified in the public notice. In  
12 general there are two major proposed changes to the  
13 Maryland State Programmatic General Permit.

14 The first is to reduce the upper limit  
15 threshold for impacts for projects eligible to be  
16 evaluated under the Maryland State Programmatic  
17 General Permit from three acres of tidal waters of  
18 the U.S., including wetlands, and five acres of  
19 nontidal waters of the U.S., including wetlands, to  
20 one acre for both tidal and nontidal waters of the  
21 U.S., including wetlands. Projects over one acre  
22 would not be eligible for the Maryland State  
23 Programmatic General Permit.

24 The second is to add an upper impact limit

1 to virtually all Category III activities that involve  
2 a discharge of dredge or fill material. That limit  
3 is 500 linear feet of impact to streams and wetlands,  
4 with a total impact to streams and wetlands of less  
5 than 5,000 square feet. Projects that do not meet  
6 this limit would not qualify for Category I and would  
7 be evaluated under Category III.

8 The Corps regulates structures and work in  
9 navigable waters of the United States under Section  
10 10 of the Rivers and Harbors Act, and the discharge  
11 of dredged or fill material in all waters of the  
12 United States under Section 404 of the Clean Water  
13 Act.

14 Section 404 of the Clean Water Act  
15 authorizes the Secretary of the Army, acting through  
16 the Chief of Engineers, to issue State Programmatic  
17 General Permits after notice and opportunity for  
18 public hearing.

19 The decision whether to reissue the  
20 Maryland State Programmatic General Permit, with or  
21 without modifications, or not to reissue it, will be  
22 based on an evaluation of the probable impacts,  
23 including cumulative impacts, of the proposed  
24 activity on the public interest.

1           That decision will reflect the national  
2   concern for the protection and utilization of  
3   important resources. The benefit which reasonably  
4   may be expected to accrue from the proposal, will be  
5   balanced against its reasonable foreseeable  
6   detriments.

7           All factors which may be relevant to the  
8   proposal will be considered. Among these are  
9   conservation, economics, aesthetics, general  
10   environmental concerns, wetlands, cultural values,  
11   fish and wildlife values, flood hazards, floodplain  
12   values, land use, navigation, shoreline erosion and  
13   accretion, recreation, water supply and conservation,  
14   water quality, energy needs, safety, food and fiber  
15   production, mineral needs and, in general, the needs  
16   and welfare of the people.

17           The Corps is committed to work with the  
18   Maryland Department of the Environment, the  
19   regulatory review agencies and environmental groups  
20   to evaluate the Maryland State Programmatic General  
21   Permit process and if, through the public interest  
22   review, it is determined that the Maryland State  
23   Programmatic General Permit should be reissued to  
24   ensure compliance with all Federal and State

1 regulatory standards and a streamlined process.

2 All oral and written testimony that you  
3 provide today, as well as written statements received  
4 no later than November 15, 2000, will be made a part  
5 of the public hearing record.

6 There will be no questions and no  
7 interruption of speakers. Since we have so few  
8 speakers tonight, we're not going to impose a limit  
9 on you unless you -- we don't expect you to talk for  
10 half an hour but normally people speak for about five  
11 minutes or so.

12 When I call your name, please come forward  
13 to speak from this position, and please state your  
14 name, spell your last name, state your address  
15 clearly, and the interest which you might be  
16 representing.

17 We have a court reporter in the back who is  
18 recording the hearing. You will be recorded and  
19 we'll prepare a verbatim record of tonight's hearing.

20 A copy of the hearing record when available may be  
21 obtained in writing to the Baltimore District Office.

22 We are also looking at putting it on the homepage so  
23 it will be accessible to you.

24 Any questions about the hearing? Okay. At



1 this time, we will proceed with the hearing.

2 The first person who signed up to speak is  
3 Walker Oxenham.

4 MS. WALKER OXENHAM: My name is Lee Walker  
5 Oxenham. I'm with the Sierra Club. I'll spell the  
6 last name. W A L K E R O X E N H A M. I would like  
7 you to know that the Sierra Club supports the  
8 reissuance of the MDSPGP with the proposed  
9 modifications.

10 We have been strongly opposed to the  
11 existing permit. It leaves many of Maryland's  
12 critically important wetlands and streams vulnerable  
13 to destruction or damage from a wide range of  
14 activities without any notice to the Corps, the  
15 federal resource agencies, or the public, and  
16 cursory, if any, review by the MDE.

17 It allows the destruction of up to five  
18 acres of wetlands under each general permit approved  
19 with almost no meaningful review or public notice or  
20 comment. The Maryland General Permit poses  
21 significant threats to the water quality,  
22 recreational values, and seafood industry of the  
23 Chesapeake Bay and the coastal bays.

24 In addition, it puts at even greater risk

1 the many threatened and endangered species that are  
2 dependent on wetlands and other special aquatic  
3 sites. It also jeopardizes critical wintering and  
4 stop-over habitat for a multitude of migratory bird  
5 species.

6 Since the Maryland State Programmatic  
7 General Permit was issued in 1996, the nationwide  
8 permit program has been reformed, canceling the NWP  
9 26 and replacing it with several more protective  
10 replacement permits.

11 The new nationwides have an acreage of a  
12 half acre, i.e., something much lower than the one  
13 acre limit now being proposed for Maryland's permit,  
14 as well as lower reporting requirements to the Corps.

15 Nonetheless, the modified Maryland State  
16 Programmatic General Permit along with the revised  
17 standard operating procedures appear to actually  
18 offer a greater degree of protection than the  
19 nationwide alternative by providing for layered  
20 review of activities, applying greater resources and  
21 screening for those activities needing greater  
22 scrutiny.

23 We want to highlight just a few of the  
24 modifications that we particularly support. In fact,

1 I think it's seven of them. We'll be following up  
2 with more extensive written comments at a later date  
3 but in time for the deadline.

4 The activities eligible for Category I,  
5 which are non-reporting to the Corps, have been  
6 considerably narrowed and that's a very good thing.

7 The Sierra Club strongly objected to the  
8 scope of activities, few limitations on waters, wide  
9 variety of the activities, and the scale of the  
10 activities up to five acres in some instances, that  
11 were eligible for authorization without any  
12 notification to the Corps under the original permit.

13 We strongly support the proposed maximum  
14 threshold of 5,000 square feet for most activities.  
15 We believe it's critical that the exceptions for  
16 utility lines and also for vegetative stabilization,  
17 are carefully monitored to assure that the conditions  
18 for those authorizations are effectively applied and  
19 assure minimum impacts.

20 We strongly support limiting these non-  
21 reporting activities from especially sensitive waters  
22 as outlined in the Category I list, including  
23 nontidal wetlands with significant plant and wildlife  
24 value, nontidal wetlands of special state concern,

1 and Use III trout waters. The time of year  
2 restrictions will provide additional protection to a  
3 protected species.

4 Point 2. We also strongly support the  
5 modified approach for activities that are exempt from  
6 state wetlands and waterway requirements. The Sierra  
7 Club has strongly opposed the exemptions from  
8 Maryland State Programmatic General Permit review  
9 provided for state exempt activities that were  
10 available in the original permit.

11 Activities, up to the maximum of five acres  
12 in some instances, that are subject to review under  
13 the Federal Clean Water Act protections have been  
14 shielded from any review or permit requirements  
15 simply because there were no counterpart protections  
16 under state law.

17 Appropriately, these activities would now  
18 have individualized review by the Corps under either  
19 Category I or Category III criteria.

20 Point 3. We support the one acre maximum  
21 threshold proposed. As we've indicated, we recognize  
22 that the new nationwide is offering even lower  
23 threshold.

24 However, we believe that the cutoff at one

1 acre has the potential to promote a more efficient  
2 allocation of resources between the state and federal  
3 regulatory agencies enabling them to cover the  
4 project review responsibilities more effectively.

5 Point 4. We support the improved  
6 provisions for resource agency involvement under the  
7 proposed modifications. The original permit failed  
8 to adequately safeguard threatened and endangered  
9 species by assuring proper screening and kick out  
10 opportunities by the resource agencies pursuant to  
11 the Endangered Species Act.

12 The proposed modifications include  
13 provisions for posting of project application  
14 information so that the resource agencies can be kept  
15 abreast of potential threats to listed species  
16 habitat.

17 In addition, we support the provisions that  
18 would alert the resource agencies immediately if a  
19 permit application would involve a listed species  
20 database hit and would stop the authorization process  
21 until that issue is resolved.

22 Point 5. The avoidance and minimizing of  
23 wetlands destruction would be greatly enhanced under  
24 this modified permit. Projects with the potential

1 for more than minimal impact, would be more assuredly  
2 directed towards MDE individual permit review which  
3 applies an alternative analysis comparable to the  
4 Clean Water Act Section 404 guidelines.

5 Point 6. The modified permit includes  
6 reporting and evaluation procedures that require the  
7 Corps to respond to problems identified in the  
8 administration of the permit. We strongly support  
9 that.

10 The final point. The Sierra Club strongly  
11 favors the improved public participation provisions  
12 in the modified permit. Our organization supports  
13 measures that encourage, rather than frustrate,  
14 public participation. We believe that our members  
15 and the public at large will be able to much more  
16 effectively participate in the review process through  
17 access to the RAMS database.

18 In addition, ratcheting down the acreage  
19 thresholds at which individual permit review by the  
20 Corps would be required, i.e., bringing them down to  
21 one acre, would trigger additional public oversight  
22 of the program to the great benefit of Maryland's  
23 resources. Thank you very much.

24 MS. MORRISON: The next speaker is Denise

1 Obert.

2 MS. OBERT: My name is Denise Obert. I'm  
3 with the National Wildlife Federation. The last name  
4 is spelled O B E R T.

5 Thank you for the opportunity to provide  
6 comment. My name is Denise Obert and I'm the Mid-  
7 Atlantic Regional Organizer for the National Wildlife  
8 Federation. I'm also just getting over a cold so I  
9 hope I don't lose my voice. I'll try to keep this  
10 short.

11 The Federation is the nation's largest  
12 member supported conservation group. We work with  
13 our members, state affiliates, and allies to protect  
14 nature, wildlife, and the world we all share.

15 While I'll keep my oral remarks short and  
16 general, we are submitting written detailed comments  
17 for the record. Over 35,000 members of the National  
18 Wildlife Federation reside in Maryland. They drink  
19 the water. They swim and fish in Maryland's  
20 waterways. They care very much about the wildlife  
21 and other resources that these waters and wetlands  
22 support.

23 It is especially on behalf of those members  
24 that we are here today to express our strong support

1 for the proposed revisions to Maryland's General  
2 Wetlands Permit Program.

3 The revised Maryland General Permit will  
4 finally give Maryland waters the clean water  
5 protection they need and deserve. For too long the  
6 current Maryland SPGP has allowed the Corps to turn a  
7 blind eye, as developers and industry dredge and fill  
8 the very wetlands and waters the Corps is charged  
9 with protecting. Ninety percent of Maryland's  
10 remaining wetland acres are located in the Chesapeake  
11 Bay watershed.

12 The Corps' existing permit allows the  
13 destruction of up to five acres of wetlands under  
14 each general permit approved, with almost no  
15 meaningful review or public notice or comment.

16 This reduced protection for Maryland  
17 streams, creeks, wetlands, and bays puts the water  
18 quality, recreational value, and seafood industry of  
19 the Chesapeake and coastal bays in jeopardy.

20 Provisions of the Maryland General Permit  
21 revisions that we particularly support, include  
22 decreasing the upper limit on impacts to tidal and  
23 nontidal waters, including wetlands, from five acres  
24 under the current Maryland SPGP to one acre.



1 Reducing this upper limit will offer more protection  
2 to wetland and aquatic resources.

3 It is also more consistent with the Corps'  
4 recently modified nationwide general permit and other  
5 state permits. In addition, the revised permit  
6 establishes more specific conditions that will  
7 dictate what activity is eligible for authorization  
8 under the general permit process.

9 These revised conditions will help ensure  
10 that the use of Maryland's General Permit is limited  
11 to activities that truly are of minimal impact  
12 bringing Maryland's wetland permit system into  
13 compliance with the Clean Water Act.

14 Clarifications will also make the  
15 permitting process more user-friendly by allowing  
16 project applicants to verify whether or not their  
17 project is eligible for general permit authorization,  
18 defining a process for resource agency and public  
19 involvement, and placing specific time limits on  
20 activity authorization.

21 We urge the Corps to adopt these revisions  
22 and others addressed in our written statement. We  
23 would also like to suggest two further revisions that  
24 will further strengthen the general permit process.

1           First, we urge the Corps to conduct a  
2 thorough assessment of the cumulative impacts of  
3 activities eligible for Maryland's General Permit  
4 approval as required by the National Environmental  
5 Policy Act.

6           We would also like to see the Corps  
7 strengthen the proposed modifications to reporting  
8 evaluation activities by specifically including  
9 assessments of cumulative impacts.

10           Further, we believe the public must have  
11 the opportunity to review all Maryland General Permit  
12 applications and final General Permit decisions.  
13 Under the proposed revisions, only activities under  
14 certain categories will require public notice and  
15 allow opportunity for public comment.

16           We believe the Corps should expand the  
17 opportunities for public comment to all categories  
18 and also improve public access to the information.

19           In summary, the National Wildlife  
20 Federation urges the Corps to move quickly forward to  
21 revoke the current statewide general permit, and  
22 adopt the proposed modifications and some additional  
23 written revisions discussed above and in our written  
24 comments, to ensure compliance with the Clean Water

1 Act.

2 Doing so would result in a long over-due  
3 victory for Maryland's people and its wildlife.

4 Thank you.

5 MS. MORRISON: Thank you.

6 The next speaker is Robert Shreeve.

7 MR. SHREEVE: I'm Robert Shreeve. The last  
8 named is spelled S H R E E V E. I am representing  
9 the Maryland State Highway Administration. We at  
10 State Highway, find that the modifications to the  
11 MDSPGP are, for the most part, quite reasonable. We  
12 think they are very environmentally responsible.

13 We do have some concerns, one of which is  
14 the in-stream time of year restrictions referred to  
15 in the COMAR chapters, but then to go on to list out  
16 all the pieces, except they forget the yellow perch  
17 restrictions of being February 15 to June 15. We  
18 believe that those restrictions are important.

19 All of the impact threshold, for the most  
20 part, generally state that "impacts the streams and  
21 wetlands of 500 linear feet with a total of 5,000  
22 square feet."

23 SHA would propose that stream impacts be  
24 limited to less than 500 linear feet, wetland impacts

1 limited to less than 5,000 square feet, with a total  
2 impact of less than 5,000 square feet.

3 That's to keep the measurements very  
4 similar to how things are measured today so that  
5 consistency can be kept throughout the whole process  
6 of permitting and tracking impacts.

7 Where conditions in the draft MDSPGP say  
8 that an application must be submitted to MDE through  
9 MDE, RLOA and GWCP process several activities that  
10 just require 30-day pre-construction notification to  
11 the MDE. We would like that revised to -- we  
12 recommend revising it to say, application or  
13 notification be submitted to MDE, whichever is  
14 appropriate based on the type of work.

15 Category I Activities, Section A and B, are  
16 primarily agricultural-related or landscape  
17 management area-related activities. State Highway  
18 uses many of these activities in its' maintenance of  
19 right-of-ways. We have used tide gates to reduce  
20 sediment loads and culverts.

21 We certainly maintain our right-of-ways  
22 very similarly to a landscape management area. We  
23 would like to ask that the Corps of Engineers ensure  
24 that we and other public utility agencies be able to

1 utilize those Sections for some of our maintenance  
2 activities.

3 (Section) C talks about scientific  
4 measurement devices. Under soil investigation it  
5 allows for soil testing within wetlands and streams.  
6 We would like the Corps to clarify whether it allows  
7 for the crossing of the streams and wetlands to get  
8 to areas that need soil testing.

9 Under "Scientific Measurement Devices", a  
10 lot are listed but they all seem to be stream-  
11 related and we would like to have clarified as to  
12 whether ground water monitoring can be allowed under  
13 "4" or whether that should go under Subsection 1  
14 under "Scientific Measurement Devices and Survey  
15 Activities".

16 Under Section D, Repair and Maintenance  
17 Activities, Subsection 1, General Maintenance,  
18 discusses that the activity is allowed for the  
19 repair, rehabilitation, and replacement of currently  
20 serviceable structure or fill.

21 It goes on to state currently serviceable  
22 as being usable in its' current condition or with  
23 some maintenance. It also says currently serviceable  
24 does not mean a structure or fill that is so degraded

1 that it essentially requires reconstruction.

2 SHA contends that these are contradictory  
3 statements; that reconstruction and replacement are  
4 essentially the same. The draft goes on to say the  
5 activity authorizes repair and rehabilitation or  
6 replacement of structures destroyed by storms and  
7 floods.

8 SHA asks that the Corps consider that, if  
9 the design is still appropriate but the wear and tear  
10 have taken a toll, the structures and the fills  
11 should be able to be replaced in-kind.

12 For "Armoring Bridges and Causeways", under  
13 one of the conditions, there is a condition that  
14 armoring must not extend more than 10 feet. There's  
15 no directional orientation given. Typically under  
16 today's current standards, we are allowed to armor  
17 six feet channelward from the banks or from the  
18 structure.

19 We can use scour protection to protect the  
20 structure up to 25 feet up-stream and down-stream.  
21 We would like to have that condition modified so that  
22 it conforms to today's practices.

23 "Maintenance of Tidal Roadside Ditches",  
24 SHA believes that this section should also apply to

1 nontidal roadside ditches. The impact threshold  
2 should be measured -- the impact thresholds for that  
3 also state that the impacts are measured along the  
4 centerline of the project.

5 We're unclear and we believe it needs to be  
6 clarified as to whether that means that all the  
7 ditches within that section are just measured for  
8 that section or whether the right-hand ditch and the  
9 left-hand ditch are measured separately. It's a big  
10 deal.

11 Under Section E, Fill Activities, it talks  
12 about minor nontidal fills. We're concerned why they  
13 broke out minor nontidal fills, as opposed to minor  
14 tidal fills where most other areas within the  
15 application or the MDSPGP referred to don't really  
16 break it out one way or the other. We would like to  
17 be able to include tidal fills in a minor nature.

18 "Structural Discharges" -- one of the  
19 conditions under structural discharges, this is still  
20 under "Fill Activities", is that there cannot be any  
21 changes to a structure within navigable waters.

22 SHA would request that the Corps consider  
23 allowing widening of an existing structure, as long  
24 as the impact threshold is met and that the basic

1 configuration of the structure is not changed.

2 "Clearing Debris and Windfalls" -- one of  
3 the conditions states that no equipment in the  
4 stream. We would like that clarified to say that  
5 equipment may reach into the stream with an excavator  
6 or armored boom, but that the equipment itself must  
7 sit on the stream bank or the road crossing to remove  
8 the debris.

9 Section G, Boating/Navigation-Related  
10 Structure and Activities, SHA request that an  
11 activity be added for the repair and replacement of  
12 fenders and dolphins for structure crossing navigable  
13 waters to be included. These are safety items and  
14 generally need to be repaired or replaced as soon as  
15 they are usually hit by a barge or tugboat.

16 We also, under Section H, Shoreline/Bank  
17 Stabilization Activities, would like Subsection 3,  
18 Vegetative Stabilization, clarified as to is this  
19 activity only for marsh establishment areas or can it  
20 be used for stream bank stabilization projects.

21 No. 5 deals with nontidal bank  
22 stabilization and we would like to clarify that, or  
23 we would like to have that clarified, as to if it can  
24 include in-stream grade control structures such as



1 cross vanes and rock vanes. Thank you.

2 MS. MORRISON: Thank you. Next speaker is  
3 Jennifer Aiosa.

4 MS. AIOSA: Thank you. My name is Jennifer  
5 Aiosa. The last name is spelled A I O S A. I'm here  
6 tonight representing the Chesapeake Bay Foundation.  
7 The Chesapeake Bay Foundation is the largest  
8 nonprofit organization in the region dedicated  
9 primarily to the restoration and protection of the  
10 Chesapeake Bay.

11 We have over 40,000 members in Maryland  
12 alone. In addition to the comments that I'm  
13 presenting here tonight, we'll also be submitting  
14 more detailed written comments for the record.

15 In general, I would like to say that the  
16 Chesapeake Bay Foundation is pleased with the  
17 proposed revisions to the Maryland State Programmatic  
18 General Permit. We are particularly supportive of  
19 the proposed reductions in thresholds from five and  
20 three acres to one acre.

21 We are also particularly supportive of the  
22 reduction in Category I maximum impacts of 5,000  
23 square feet and 500 linear feet. We believe these  
24 are important and they will provide additional

1 environmental protection, as well as improved review  
2 of environmental impacts.

3 We also believe it is particularly  
4 important that we be consistent, or more consistent,  
5 with the recently modified nationwide permits and  
6 other state programmatic general permits,  
7 particularly in New England.

8 I think it is also important to note that  
9 Virginia is embarking on developing nontidal  
10 regulations in their state and they are particularly  
11 interested in seeing what Maryland is going to do  
12 regarding their state programmatic general permit.

13 I think it's important for the protection  
14 of the Chesapeake Bay that we have some regional  
15 consistency among our general permitting programs.

16 A few others things that the Chesapeake Bay  
17 Foundation is particularly supportive of is  
18 improvements and clarifications in the permitting  
19 processes as we see them.

20 We are particularly supportive of the  
21 verification process as it's indicated in the  
22 proposed modifications. We think it's also important  
23 that there's a more definitive process for resource  
24 agency, as well as public, involvement.

1           We are also supportive of the specific time  
2 limits on permit activity authorization as it's  
3 clarified in the proposed modifications. We also are  
4 particularly supportive of the compliance  
5 confirmation that will be included as part of the  
6 State Programmatic General Permit.

7           In addition, we are particularly supportive  
8 of the general conditions, as well as the activity  
9 specific conditions, that have been included in the  
10 proposed modification of the State Programmatic  
11 General Permit.

12           We believe that these conditions would  
13 truly limit the use of the SPGP to only activities  
14 with minimal impact and would, therefore, be  
15 consistent with the original intent of the SPGP.

16           We are supportive of most Category I  
17 activities requiring an application to MDE, and  
18 supportive as well of the best management practices  
19 that are included as part of the general and  
20 activity-specific requirements.

21           While we do strongly support the proposed  
22 modified permit, we do believe there's room for some  
23 further strengthening during the re-issuance of the  
24 SPGP.

1           First and foremost, we believe that we need  
2   to have increased opportunity for public involvement.

3       Only Category III(b) activities would require public  
4   notice and allow for opportunity for citizen input.

5

6           We would like to see the Corps and MDE  
7   improve the availability of information, perhaps  
8   using electronic access, to more readily make  
9   available information to the public and the resource  
10   agencies and increase opportunities for public review  
11   and involvement.

12          We also think that the proposed  
13   improvements in tracking and reporting and evaluating  
14   activities, while they are good under these proposed  
15   modifications, we do believe there's room for further  
16   strengthening specifically where the assessment of  
17   cumulative impacts is concerned.

18          We believe that the Corps and MDE should  
19   consistently seek to avoid and minimize impacts and  
20   should be tracking and evaluating the cumulative  
21   environmental impacts of all authorized activities.

22          We do have a few specific comments and  
23   questions, again which will be elaborated upon in our  
24   written comments.

1           One that I wanted to bring up tonight is  
2   under Category H, which is "Shoreline Stabilization  
3   and Shoreline Activities", we do have a question on  
4   H(1), H(2), H(4), and H(5) regarding the language  
5   that says, "Authorization of impacts to no more than  
6   10 percent of any adjacent marsh, wetland, or  
7   submerged aquatic vegetation."

8           We believe that the Corps and MDE and need  
9   to clarify that statement. We see no quantification  
10   of a total cap on impacts as there are with other  
11   Category I activities of 5,000 square feet. We would  
12   like to see a clarification of that.

13           As I said earlier, and I think other  
14   colleagues of mine have said, we do believe that  
15   this, in general, is a significant improvement over  
16   the existing Maryland State Programmatic General  
17   Permit and we would encourage that these  
18   modifications be adopted. Thank you.

19           MS. MORRISON: Thank you. Next speaker is  
20   Neal Fitzpatrick.

21           MR. FITZPATRICK: My name is Neal  
22   Fitzpatrick and I'll spell Neal because usually that  
23   has more difficulty than Fitzpatrick. It's N E A L.  
24   I represent the Audubon Naturalist Society which is

1 a 10,000 member, Metropolitan/Washington area-based,  
2 independent Audubon group, with about 5,000 members  
3 in Maryland. We are very pleased to be here to  
4 support the proposed changes in the State  
5 Programmatic General Permit for Maryland.

6 I support what my colleagues have said from  
7 the Sierra Club and from the National Wildlife  
8 Federation and from the Chesapeake Bay Foundation.  
9 In particular, the reducing of the thresholds and in  
10 particular, the improved screening for rare,  
11 threatening, and endangered species impact.

12 In particular, the addressing of the  
13 cumulative impact issues. In fact, I would like for  
14 there to be a written evaluation of the cumulative  
15 impacts. I'll be more specific in my written  
16 comments that I'll submit by the 15th.

17 In particular, the improvements that have  
18 been made on the resource agency involvements and  
19 Fish and Wildlife Service access to the database. I  
20 think it would be a good idea to have a 30-day  
21 interagency review and comment period for Category  
22 III permits. I don't believe that any permit should  
23 be authorized until all endangered species issues are  
24 addressed.

1           The public notice process needs to be  
2 improved. Maybe it would be a good idea to have  
3 internet access to all applications just for review,  
4 not necessarily for comment. I think there should be  
5 internet access to all decisions. Also internet  
6 access to the annual monitoring reports.

7           I am on the list. I get notices. I did  
8 respond to the National Harbor notice that went out  
9 in September. I requested a 30-day extension. I  
10 requested a field trip. Haven't heard back. I'm  
11 hoping under the new program there will be more  
12 timely responses. Usually I hear back. I just  
13 haven't heard back by today.

14           I think it would be a good idea to evaluate  
15 the program at the mid-point of the five-year cycle.  
16 Maybe having a two-year evaluation and a four-year  
17 evaluation. That would give people enough time to  
18 look at what's been accomplished and get ready for  
19 the next five-year cycle.

20           Finally, Tom Horton raised a really  
21 interesting point in his State of the Bay publication  
22 which I would like to raise, and that's the problem  
23 we will have in these additional protections if the  
24 staff at the Corps of Engineers and at the Maryland

1 Department of the Environment is not adequate for the  
2 job.

3 I don't think there's been enough of a  
4 discussion about the staff resources that's going to  
5 go into the needed improvements that are proposed and  
6 whether there's an expanded budget that has been  
7 calculated from both MDE's perspective and from the  
8 Corps' perspective.

9 There is strong public support for these  
10 important improvements. Unless the staff is adequate  
11 to the task, I'm afraid we are going to be frustrated  
12 by another problem. Not necessarily the language in  
13 the MDSPGP but in the needed resources for the  
14 agencies to accomplish the goals. I don't know what  
15 to do with that other than to pose it as a question.

16 Thank you.

17 MS. MORRISON: Thank you. Next speaker is  
18 Larry Liebesman.

19 MR. LIEBESMAN: With that entrance, Linda,  
20 I don't know what to say. Thank you. My name is  
21 Larry Liebesman with the law firm of Linowes and  
22 Blocher in Silver Spring. I've been in the wetlands  
23 program for at least one or two years going back to  
24 my days in the Federal Government and the last 12



1 years in the private sector.

2           What I would like to do is sort of briefly  
3 give my perspective of what I see are the changes  
4 going on with the State Programmatic General Permit  
5 and why I think things have improved, but that there  
6 is still a lot of room for significant improvement.

7           As we go back to the early days of the  
8 State Nontidal Wetlands Protection Program, the idea  
9 was to work in partnership between the state and the  
10 Army Corps so that we achieve both better protection  
11 of the resource but better guidance to the regulated  
12 community.

13           There's been a lot of work in that  
14 direction over the last 10 to 12 years. We try to  
15 get assumption through. That didn't work. Then we  
16 fell back to the idea of the State Programmatic  
17 General Permit.

18           The idea of the State Programmatic General  
19 Permit was to recognize that the state has a well-  
20 developed wetlands and waterways protection program,  
21 that the resources were there to make sure that it  
22 continued to function to achieve the no net loss goal  
23 of the state program and that the Corps would be a  
24 partner in that regard.

1 I think what we've seen since the State  
2 Programmatic General Permit was issued back in '96,  
3 is a lot of progress toward that end. Still a lot of  
4 problems but the idea that the state would be sort of  
5 the primary regulator working closely with the Corps,  
6 and that the idea of a federal safety net to protect  
7 wetlands and waters, was maybe much less of a concern  
8 here in Maryland than it is in other states around  
9 the country.

10 Indeed, I think the record in terms of  
11 wetlands protection, in terms of the kinds of losses  
12 that have taken place here over the last five years,  
13 is pretty commendable. I think MDE is doing a pretty  
14 good job and they are trying to work with the  
15 regulated community.

16 That sort of brings me to probably my  
17 biggest concern with what I see in this change, and  
18 that is lowering the impact down to one acre for the  
19 applicability of the proposed changes to the general  
20 permit.

21 The assumption that I see underlying this  
22 change is that anything above one acre requires the  
23 federal safety net. It requires an individual Army  
24 Corps Section 404 for a permit. Otherwise, the

1 resource will not be protected adequately.

2           It would also involve a more detailed  
3 review by the Corps to make sure that that happens.  
4 That is, that the state can't do that effectively and  
5 essentially you have to have two parallel processes.

6           I don't believe that's really supported by  
7 the data, by the record that's gone on over these  
8 last five years, by the idea of getting the regulated  
9 community to buy into the process to provide clear  
10 guidance to the regulated community, and to make sure  
11 that there are incentives to work with the  
12 regulators.

13           What I fear right now is that, if indeed  
14 this one acre limit is adopted across the board, no  
15 matter how valuable or invaluable the resource is,  
16 and we are all assuming that anything above one acre,  
17 even for a very low-value wetland, means that the  
18 impacts are more than minimal, is going to create  
19 havoc and could have a very negative affect on how  
20 this process works, how the agencies work together.

21           What it means, it seems to me, is that  
22 you're going to tell the regulated community that  
23 they have to now spend a lot of time going through  
24 this individual permit process, even if there are

1 parallels, even if they are working together with the  
2 state, and that there has to be review, public  
3 interest analysis, environmental assessment and  
4 compliance. All those reviews that go with the  
5 individual permit process delay things and don't  
6 necessarily lead to a better result environmentally.

7 I would submit there could be some  
8 tremendous disincentives on the part of the regulated  
9 community to try to avoid and try to minimize and try  
10 to deal with this process efficiently.

11 Unfortunately, that's a bad result. That's  
12 not what this whole program is all about. That's not  
13 what's coming out of Washington. I think if you look  
14 at the data, the Corps has even said in Washington in  
15 their environmental assessment they issued in '98,  
16 when they looked at how the issues are across the  
17 country, they said it's possible that you could have  
18 an impact of four to five acres and be minimal.

19 It's possible you could have an impact of  
20 under an acre and be more than minimal. Yet, what  
21 this proposal does is it says, as soon as you are a  
22 drop above one acre, it's by definition more than  
23 minimal and you have to go through this individual  
24 process. I don't think that is founded by the data.

1 It's not supported by the success that we've seen in  
2 this program.

3 I would strongly urge the Corps to fall  
4 back to the idea of a five-acre -- stay with the idea  
5 of a five-acre cap for nontidal, three acre for  
6 tidal, and allow the public process to move forward  
7 allowing a certain situation.

8 If you are above an acre through the public  
9 notice process, comments of the agencies, for the  
10 Corps to make a decision, yes, maybe we want to go  
11 through the IP process.

12 In other situations, maybe not recognizing  
13 you can't get below that acre, but maybe there are  
14 sufficient safeguards, sufficient protections to make  
15 sure that the resource is protected, and yet the  
16 goals of the project are met. Eliminating that  
17 discretion seems to me is going to be a tremendous  
18 disincentive.

19 Again, I strongly urge that we stick with  
20 the five-acre cap. I don't think the public is going  
21 to be harmed. There's adequate opportunity for  
22 notice and comment. Adequate opportunity to present  
23 views.

24 Certainly the resource agencies, EPA, and

1 Fish and Wildlife Service can comment. They are at  
2 the table like they are right now. I strongly urge  
3 you to discard this one-acre cap and stick with where  
4 we are right now.

5 As far as other issues are concerned, I  
6 think that there is certainly room to improve the  
7 predictability in terms of the alternatives analysis.

8 We have to work at better guidance and how you look  
9 at practical alternatives.

10 I think we have to work at dealing with  
11 some of the inefficiencies in the process and the  
12 standard operating procedures to make sure that they  
13 work better. To look at the time frames for how the  
14 process is working.

15 This whole issue of isolated wetlands, I  
16 know is very controversial and it's now before the  
17 Supreme Court right now. I see the Corps is sort of  
18 kicking it out of Category I. I understand where  
19 you're coming from. I would like to see where the  
20 Supreme Court is going to come down on that issue to  
21 make certain decisions depending on how they might  
22 rule.

23 I guess, in conclusion, on behalf of the  
24 groups I represent and the process that I've been

**SAG, CORP**

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1 very close to over these many years, I think you need  
2 to take a step back and look at some of these issues  
3 and look especially at this cap. I would submit stay  
4 with what we have. Thank you.

5 MS. MORRISON: Thank you.

6 Maria, do we have any other speakers?

7 Does anybody else who didn't sign up wish  
8 to speak? Okay. Thank you very much. That ends the  
9 hearing tonight.

10 (Whereupon, at 6:13 p.m. the hearing was adjourned.)